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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,388	11/14/2003	Randal A. Hetrick	0 3DD-108270	3959
40280	7590	12/30/2005	EXAMINER	
STEVEN VOSEN 1563 SOLANO AVENUE #206 BERKELEY, CA 94707			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER

3764

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,388

Applicant(s)

HETRICK, RANDAL A.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 and 22-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,10 and 14-21 is/are rejected.
- 7) ☒ Claim(s) 11-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings were received on September 13, 2005. These drawings are acceptable.

Response to Arguments

2. Applicant's arguments filed September 13, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an integral grip to be grasped by the hand) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's specification indicates that "the noun "grip" encompasses **any device** that is interlockable with part of the human body, that is it can be connected in such a way that a person can transfer a force to the grip, preferably a force equal to some or all of the person's weight." (paragraph [0009], emphasis added). This definition of "grip" therefore would include anything that can be interlockable with part of the human body to transfer a force equal to some or all of a person's weight. The pulleys 6,6a of *Macabet* are capable of being grasped by a user, and therefore, satisfy the broad definition of "grip" provided for in the specification. The principle of inherency is not being relied upon by the examiner. It is the user that is interlocking with the pulley, and that is an intended use.

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the intended use as recited in the preamble, or elsewhere in a claim, then it meets the claim.

Applicant further argues that the grips of *Macabet* are removably coupled to snap hooks on the device's cables and that there is no basis for considering the snap-hooks as grips. As above, the snap hooks are graspable by the hand and satisfy Applicant's definition of grip.

Applicant argues that a mechanism for adjusting the length of the cable cannot be found and that mechanism 15 is a device for securing the end of cable 5. The mechanism 15 is the mechanism to adjust the length of the cable. The mechanism 15, shown in Fig. 5, is a block slide in which is passed the end of the cable locked in the groove in the slide so that it is thus possible to give variable useful length to the cable (col. 2, lines 33-36).

Applicant argues that the cords 7,8 are not taught or suggested as being grips. A "grip" as broadly defined by Applicant's specification, would encompass the cords 7,8. They are devices that can be surrounded by a body part, such as an elongated member that can fit within the grasp of the hand.

Applicant argues that an anchor having an enlarged end passable through a door jamb is not taught or suggested by *Macabet*. Applicant's attention is directed to Fig. 6 showing a door 19 having a door jamb as a stationary support for an enlarged portion 18 of an anchor.

Furthermore, strap 17 includes enlarged ends 17a which are capable of being passable through a door jamb.

Applicant argues that there is no teaching in *Macabet* to provide frictional resistance to the movement of the cable. The claim language does not require there to be frictional resistance between the anchor and the elongated member to resist movement of the elongated member relative to the anchor. As Applicant argues, there exists a minimal amount of friction. Also, applying an equal amount of force to each pulley would result in the integral grips being maintained at a constant distant from the anchor.

Applicant argues that with respect to *Davies*, as applied to claims 1 and 21, no accessory grip removably coupled to the at least one integral grip can be found. The cord 12 is removably extended through the hand grip 20 and through guide 38 of the accessory grip 18. Cord 32 is also removably attached to the hand grip 20 (Fig. 3). The accessory grip 18 is thus removably coupled to the integral grip.

Applicant argues with respect to claim 20, that *Macabet* nor *Wolfe* teach or suggest an accessory grip removably coupled to an integral grip. The Examiner's response is discussed above with respect to *Macabet*. *Wolfe* teaches the use of a wall apparatus for supporting an exercise device. The wall apparatus provides a support structure that can be installed in a wall on a permanent basis, and is reliable and convenient when used to support a strap or rope during exercises (col. 1, lines 20-23). *Macabet* discloses an anchor in the form of a strap 17. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of

the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In this regard, a conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F. 2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

Applicant argues that *Wolfe* teaches a bracket that accepts a ball attachment to a strap, and thus teaches away from attaching the strap directly to the bracket. The claim language does not require the bracket to accept the strap. The claim language requires an anchor including an enlarged portion at the second end and a strap between the first end and the second end, with the opening in the bracket sufficiently small to prevent the enlarged portion from passing through the opening. The ball of *Wolfe* would satisfy this limitation.

Applicant argues, with regard to claims 14 and 15, that the cord connector means 30 of *Dunston* are not equivalent to a cam buckle because they restrain a cord by grabbing at a length of the entire circumference of the cord and that cam buckles are adapted for use with straps. Firstly, the claims do not require that the elongate member be a strap. Secondly, the mechanisms 30 are cam buckles in the sense that they perform a camming action on the cords to provide an adjustable length of cord to be used. A reasonable broad interpretation of “cam buckles” would include the mechanisms 30 of *Dunston*.

Applicant argues that there is no teaching of providing two cam buckles. *Macabet* teaches that each end of the pulleys 6,6a is provided a tubular block slide to give a variable useful length to the cable (col. 2, lines 30-36).

Applicant argues that *Shields* teaches a glove providing support to the hand of a person gripping a handle and also argues that there is no teaching or suggestion in *Shields* for a glove that attaches to a handle or any other grip. The Examiner agrees that *Shields* teaches the use of a “glove” to support the hand of a person gripping a handle. This is shown in Figs. 1 and 2 and taught at col. 1, lines 45-46. The “glove” is a device that is interlockable with part of the human body such that a person can transfer a force to the grip. See Applicant’s definition in paragraph [0009] of the specification.

The rejection of claims 1 and 10-13 as being unpatentable over the tricep rope of *Bodybuilder’s* is withdrawn. The cords of the tricep rope are not adapted for gripping in any combination. All of the cords of the tricep rope are adapted to be grasped at the same time.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 10, 16-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by *Macabet et al.* (US Pat. 3,752,474). *Macabet et al.* discloses a portable exercise apparatus comprising a resistance exercise device having at least one integral grip 6,6a; and an accessory grip 10,13,20,21 removably coupled to the at least one integral grip. Applicant has defined a grip to encompass any device that is interlockable with part of the human body [0009].

Therefore, at the least, the pulleys 6,6a qualify as grips.

With regard to claim 2, the at least one grip is a pair of grips 6,6a. The resistance exercise device includes an inelastic elongated member 5 between the pair of grips 6,6a, and an anchor 2,3,4 for attaching the elongated member 5 to a stationary support 1,19.

With regard to claim 3, the anchor has a first end 4 slidably attached to the elongated inelastic member between the pair of grips and a second end 2 adapted for attaching to the stationary support.

With regard to claim 4, the inelastic member 5 further includes a mechanism 15 to adjust the length of the inelastic member between the pair of integral grips.

With regard to claim 10, the accessory grip includes a plurality of cords 7,8 adapted for gripping, in any combination, by a hand of a user. The cords can be adapted by attachment of the grip 10 or other accessory grips disclosed.

With regard to claim 16, the stationary support may be a closed door 19 having a door jamb, wherein the anchor includes an enlarged portion 18 at the second end and a strap 2 between the first end 4 and the second end that is passable between the closed door and the door jamb, and wherein the enlarged end 18 is not passable between the closed door and the door jamb.

With regard to claim 17, the stationary support is a pole 1, rail or stanchion, wherein the first portion (second end) includes a strap 17 and a tensioning device 17a, wherein the strap has a length sufficiently long to wrap about the stationary support 1, and wherein the tensioning device is adapted for tightening the strap about the stationary support.

With regard to claim 18, the length of the elongated member is between 6 feet and 12 feet. In looking at the drawing of Fig. 1, if the user is of average height, around 5 feet 8 inches,

the length of the inelastic elongate member 5 between the pair of grips 6,6a, as shown, would be approximately 9 feet.

With regard to claim 19, the support 1,19 and elongated member 5 interact to provide frictional restraint with respect to the anchor 2 when the pair of integral grips 6,6a are pulled in a direction away from the anchor 2 as a function of the force applied to each of the pulled grips. When the force applied to each of the grips is increased while the grips are positioned equidistant from the anchor, the frictional restraint restrains the elongated member with the integral grips equidistant from the anchor. The claim language does not require there to be frictional resistance between the anchor and the elongated member to resist movement of the elongated member relative to the anchor.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by *Davies* (US Pat. 5,433,688). *Davies* discloses a portable exercise apparatus comprising a resistance exercise device having at least one integral grip 20; and an accessory grip 18 removably coupled to the at least one integral grip 20. The at least one integral grip 20 is a pair of integral grips 20. The resistance exercise device further includes an elastic elongated member 12 between the pair of integral grips 20.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Macabet et al.* (US Pat. 3,752,474) in view of *Wolfe* (US Pat. 6,258,011 B1). *Macabet et al.* has been discussed above, and such discussion is incorporated herein. *Macabet et al.* discloses the invention as claimed except for the stationary support being a wall; the anchor including an enlarged portion at the second end and a strap between the first end and the second end; a bracket having a first portion affixed to the wall and a second portion having an opening and spaced from the first portion, where the opening in the second portion is adapted to accept the strap, where the spacing between the wall and the second portion is sufficient to accept the enlarged portion, and where the opening is sufficiently small to prevent the enlarged portion from passing through the opening.

Wolfe discloses a wall apparatus for supporting an exercise device. The exercise device comprises an anchor 34 including an enlarged portion 30 and a strap 36. A bracket having a first portion 20 affixed to the wall 50 and a second portion 10 having an opening 12,14 and spaced apart from the first portion 20, wherein the opening 12 in the second portion 10 is adapted to accept the strap 36, where the spacing between the wall and the second portion 10 is sufficient to accept the enlarged portion 30, and where the opening 14 is sufficiently small to prevent the enlarged portion 30 from passing through the opening 14. The wall apparatus provides a support structure that can be installed in a wall on a permanent basis, and is reliable and convenient when used to support a strap or rope during exercises (col. 1, lines 20-23).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise apparatus of *Macabet et al.* with the anchor and

bracket of *Wolfe*, in order to provide a support structure that can be installed in a wall on a permanent basis, and is reliable and convenient when used to support a strap or rope during exercises (col. 1, lines 20-23).

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Macabet et al.* (US Pat. 3,752,474) in view of *Dunston* (US Pat. 4,060,240). *Macabet et al.* has been discussed above, and such discussion is incorporated herein. *Macabet et al.* discloses the invention as claimed except for the mechanism to adjust the length of the elongated inelastic member includes at least one cam buckle (claim 14); and wherein the at least one cam buckle is two cam buckles (claim 15).

Dunston discloses an adjustable inelastic exercise device comprising an elongated member 26 having a pair of ends separated by a length and a mechanism 30 for adjusting the length, the pair of ends including a first end having a first grip 24 and a second end having a second grip 22; and an anchor 10 having a first portion 16 for mounting the device to a structure and a second portion 12,20 to support the elongated member at a position along the length when both of the grips are pulled in a direction away from the anchor. The mechanism for adjusting the length includes at least one cam buckle 32 such that the length is adjustable according to the length of strap 26 through the cam buckle 30. Duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, it would have been a design consideration within the skill of the art to provide a second cam buckle adjacent the second end or grip of the device.

The cam buckles 30 provide means to readily adjust the amount of cord between first and second hand grips and second portion 20 and thus provide the necessary length of cord depending upon the exercise to be performed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of *Macabet et al.* with the cam buckles of *Dunston*, in order to readily adjust the amount of cord between first and second hand grips and second portion and thus provide the necessary length of cord depending upon the exercise to be performed.

9. Claims 1-7, 16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Suzaki* (US Pat. 5,352,172) in view of *Shields* (US Pat. 5,217,029). *Suzaki* discloses an adjustable, inelastic exercise device comprising an elongated member 30 having a pair of ends separated by a length and a mechanism for adjusting the length, the pair of ends including a first end 32 having a first grip 36 and a second end having a second grip 38; and an anchor having a first portion, including a strap 20 for mounting the device to a structure and a second portion 12 to support the elongated member at a position along the length when both of the grips are pulled in a direction away from the anchor, where the second portion support and elongated member interact to provide frictional restraint with respect to the anchor as a function of the force applied to each of the pulled grips.

The first portion of the anchor is removably attachable to a structure. The first grip and the second grip are considered integral hand grips. At least one of the first grip and the second grip is a finger grip, i.e. grippable by a finger. The structure is a closed door 24 having a door jamb 26, wherein the anchor includes a strap that is passable between the closed door and the

door jamb and where a part of the first portion is not passable between the closed door and the door jamb. The material of the first portion that contacts the structure is softer than the structure, such that that the anchor will not scratch the structure. The second portion includes a loop 16 or 40. The length of the elongated member is adjustable between 6 feet and 12 feet. When the forces are increased while positioning each of the grips a distance one half of the length from the anchor, the frictional restraint restrains the elongated member with the grips equidistant from the anchor.

Suzaki does not disclose an accessory grip removably coupled to the at least one integral grip (claim 1); the accessory grip having a grip attachment portion including at least one strap having a length greater than the outer circumference of the rigid elongated integral grip member and includes a fastener to secure the grip attachment portion about one of the pair of integral grips (claim 6); and the fastener is a hook and loop fastener (claim 7).

Shields discloses an accessory grip for removably coupling to an integral grip of an exercise device. The accessory grip 10 has a grip attachment portion including at least one strap 44 having a length to wrap around the outer circumference of a handle of an exercise device. A hook and loop fastener 52,54 secures the grip attachment portion 44 about the grip portions of an exercise device. The accessory grip assists a disabled person in exercising by providing securement support of the entire hand about an exercise device (col. 1, lines 45-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the portable exercise apparatus of *Suzaki* with the accessory grip of *Shields*, in order to provide assistance to a disabled person in exercising.

Allowable Subject Matter

10. Claims 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.


The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang
December 27, 2005



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332